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draft General Counsel
16 Oct 55

MEMORANDUM FOR: The Record

SUBJECT : Analysis of Draft of Regulation
"Competitive Promotion"

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Paragraph 1 - General

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1. Paragraph 1 of the proposed regulation indicates that the subsequent text will state promotion policies and procedures in grades GS-14 and below, excluding personal compensation under Wage Administration Schedules. This is a restatement, in different words but with no different scope of paragraph 1 of [REDACTED], dated 30 April 1954, which is to be rescinded.

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2. The proposed regulation also rescinds [REDACTED], dated 9 October 1954. This latter regulation establishes the circumstances under which an employee may be assigned temporarily a position of lower or higher GS grade than he holds. The proposed regulation covers the ground of [REDACTED] only insofar as this situation comes about as a result of promotion. Hence, proposed rescission of [REDACTED] would appear to cause the Agency regulations to be silent on the subject of the possibility of an employee being assigned to a position different from his grade in a non-promotion situation.

Query: Is the foregoing omission intentional? *yes* See paragraph 12, below, of this memorandum.

Paragraph 2 - Policy

3. Paragraph 2a of the proposed regulation contains a general statement of policy relative to staffing the Agency Table of Organization. It cites as criteria for staffing personal qualifications, Agency needs, and employee preferences. It implicitly suggests that the Agency policy is to staff positions with employees of the same grade as the position. (Paragraph 2f reinforces this limitation.)

Query: Is my inference correct? *yes*

4. Paragraph 2a states general criteria for promotion, including the results of the new competitive evaluation procedure. These criteria appear fair and all-inclusive. However, competitive evaluation and the other standards do not have any preordained weight relative to each other

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in the decision on whether or not to promote; the regulation as a whole, however, makes it clear that the competitive procedure requires a review of all other criteria named including the intangible one "of value to the Agency". Hence, in effect the competitive procedure is likely to produce a conclusive result subject to change only by a higher supervisory level reapplying the "value to the Agency" test.

not necessary in view of the fact
C2 P 6
OK to change
Comment: The promotion criterion in paragraph 2a reading "acceptance of Career Staff obligations" is appropriate, but as worded it may be thought to give preference to employees who have become members of the Career Staff. Considerations should be given to adding to this phrase the words "if the employee is eligible therefore".

Comment: The word "controlled" in the last sentence of paragraph 2a of the proposed regulation may suggest to some readers that opportunities for promotion are being minimized. This misimpression could be corrected by substituting the word "administered" for the word "controlled."

5. The policy expressed in paragraph 2 of the existing [REDACTED] (being rescinded) is reaffirmed in paragraph 2f and the last sentence of paragraph 3a of the proposed regulation. The policy expressed in paragraph 2, sentence 1 of existing [REDACTED] (being rescinded) is reaffirmed, in different words, in paragraph 2a of the proposed regulation. However, the assurance that employees will be considered for promotion or reassignment before external recruitment is undertaken (paragraph 2, sentence 2, existing [REDACTED]) has not been restated.

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Query: Is this omission intentional? *yes*

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The substance of paragraphs 2a and 2b of existing [REDACTED] has been carried unchanged into paragraphs 2d and 2e respectively of the proposed regulation. (But see paragraph 9 below.) *OK*

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OK
6. Paragraph 2b of the proposed regulation does not stem from any existing regulations. 2b declares that the Career Service, normally, is the competitive area for members thereof, although sub-areas will be established for persons in different lines of work. This is consistent with [REDACTED] which establishes overall policy and organizational, structural and responsibilities for administering the Agency Career Program. The delimitations in 2b appear reasonable and provide leeway for defining competitive areas both fairly and flexibly.

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7. Paragraph 2c calls for the establishment of Competitive Evaluation Panels in each Career Service to consider the cases of employees in grades GS-7 through GS-14. Panel recommendations are advisory to the Head of the Career Service, the latter making a final recommendation to the Director of Personnel. Personnel in grades GS-6 and below need not be considered by Panels but the principle of competitive promotion will be followed as practicable.

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*add
as expressed
in 2a above
delete
insofar as practicable*

Comment: It is suggested that the words "insofar as practicable" with reference to the last-mentioned personnel be deleted on the ground that they will be a cause of administrative uncertainty and non-uniformity and may be considered by some employees to provide a basis for decisions considered arbitrary. Another change which appears desirable in the interests is clarity to insert the words "expressed in subparagraph a above" after the phrase "the basic principle of competitive promotion" so as to identify one standard to be applied.

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OK

8. Paragraph 2c of the proposed regulation does not change the duty of the Head of the Career Service prescribed in paragraph 4b of existing regulation [redacted] to make recommendations to the Director of Personnel regarding promotions. The Panel procedure is a partial substitution for and also an addition to the now-existing mechanism for advising the Head of the Career Service. Paragraph 2c wisely declares the Panel recommendations and "advisory", because, although not stated in paragraph 2c, other evidence may be considered including specifically the recommendations of Career Boards and Senior Supervisors.

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9. Paragraph 2d of the proposed regulation states that the Head of the Career Service will consider each year whether or not to promote personnel in the zone of promotion. This means that names of all such employees must be "considered" by the named official even though the former are not recommended by the Panel. The draft Handbook [redacted] at II D (page 9-10) and at II A (Page 3) indicates that only the names of Panel nominees will be forwarded to the Head of the Career Service.

*OK
no change*

Comment: While as a practical matter promotions will be limited by current vacancies, the present wording of paragraph 2d of the proposed regulation will be made the basis for argument by disappointed employees who seek an appeal from the Panel decision. Would it be preferable to revise paragraph 2d by deleting "the Head of Career Service" and inserting "a Competitive Evaluation Panel". *no*

10. The first sentence of paragraph 2f reads: "Normally, individuals will be promoted to positions which correspond in grade to their grade after promotion". As it stands this sentence may be made the basis for employee pressure on supervisors to urge promotion on the ground that the Agency now wants to bring each incumbent up to the grade of his slot.

OK

Comment: This pressure can be avoided by rephrasing the first sentence to read: "Normally, individuals will occupy positions which correspond in grade to their grade after promotion."

11. The second sentence of paragraph 2f of the proposed regulation begins: "However, they may be promoted to positions higher in grade than their grade after promotion, when necessary;".

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Comment: It is suggested that the words "may be promoted to" be deleted and the words "may occupy" be substituted.

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no
Comment: "When necessary" is unlikely to be a source of uncertainty and resulting disagreements. The wording of paragraph 4 of [redacted] (being rescinded) is preferable and is to the effect that an employee may be assigned "temporarily" to a position classified higher than his present grade. More desirable than either of the two above alternatives would be a statement which removes the indefiniteness of "when necessary" or "temporarily". At a minimum, a standard should be stated by identifying an official responsible for determining "when necessary". *no whoever is authorized to sign an SF52*

OK
Comment: The second sentence of paragraph 2f (latter half) of the proposed regulation would be improved stylistically if the present wording re "promotion to a lower grade" were revised to read "may be promoted under competitive evaluation procedures and thereafter occupy a position lower in grade than their grade after promotion". *"and occupy"*

OK
Comment: A simple substitution of words avoiding the use of "staff" as a verb would make the third sentence of paragraph 2f more easily understandable. It is suggested that the words "which the Career Service staffs" be deleted and replaced by "authorized for the Career Service". *"is responsible for staffing"*

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✓
12. It was noted in paragraph 2 of this memorandum that paragraph 1 of proposed regulation [redacted] focuses on the status of employees resulting from promotion but at the same time rescinds [redacted] which establishes principles for employee-slotting in non-promotion cases. Paragraph 3a of the proposed regulation defines "Personal Rank Assignment", and in so doing makes it evident that the proposed regulation does encompass non-promotion situations. 25X1A

Comment: Has this situation been recognized specifically and is it deemed insignificant? *OK see para 2 above*

13. The definition of "Personal Rank Assignment" in paragraph 3a, first sentence, is clear. The second sentence of paragraph 3a appears to intend to adopt and to restate, in different words, the provisions of paragraph 3a,b, and c of [redacted] (being rescinded). The latter regulation now provides, in effect, that (a) Operating Officials have the responsibility for proposing temporary assignments of personnel to positions graded above or below the employees' individual grades, (b) such proposals are reviewed and favorable or adverse recommendations are made thereon by the Heads of Career Services and (c) the Director of Personnel reviews and takes final action in these cases. The comparable provision of the proposed regulation is so phrased that the above duties are made the responsibility of the foregoing officials only by implication. 25X1A

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Comment: Reversing the sequence and beginning this sentence with the duty of the Operating Official would be an improvement. Reference to the definition of "Operating Official" would be helpful. *no duplication*

no changes

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Comment: The brevity of language in the proposed draft leaves implicit rather than explicit the nature of the consideration to be given such cases by the three named officials. The use of the words "approved by the Director of Personnel" can be construed to mean that he has no alternative other than to approve. The explanation provided in the present [redacted] (being rescinded) is considerably clearer.

no change

14. Paragraph 3a(1) - (5) of the proposed regulation sets forth five "reasons" to justify a Personal Rank Assignment as being "necessary in the best interest of the Agency". The latter phrase has a self-serving flavor which some may consider less appropriate than the words of paragraph 5a or [redacted] (being rescinded) which merely describes five "circumstances" under which a temporary assignment to a lower grade is permissible. 25X1A

ok

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15. Reason (1) justifying a Personal Rank Assignment covers the case of an employee who merits promotion but for whom there currently is no appropriate higher slot open; in this case the employee may be promoted and remain in a lower-graded position if the assignment is for a specific terminable period as agreed to by the Director of Personnel, the Head of the Career Service and Operating Supervisor concerned. [redacted] (being rescinded) has no comparable provision.

Det change

ok

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Comment: It is suggested that the words "competitively promoted" be deleted and replaced by "who is recommended for promotion". This is desirable since the employee could not have been promoted unless a slot of suitable grade had been available or a Personal Rank Assignment had been approved. *"to be" "and"*

16. Reason (2) justifying a Personal Rank Assignment is merely a restatement of paragraph 5a(1) in [redacted] (being rescinded). 25X1A

17. Reason (3) justifying a Personal Rank Assignment restates paragraph 5a(3) of [redacted] (being rescinded) and makes minor changes which improve the language.

ok

no change

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Comment: One may ask whether the words "background" and "contacts" add to the word "qualifications", or are not the former encompassed by the latter and hence surplusage? *Stated by Council*

18. Reason (4) justifying a Personal Rank Assignment is comparable to paragraph 5a(4) of [redacted] (being rescinded). The proposed wording appears preferable in that a more precise justification is required (i.e., "staffing plans provide for the filling of such a position in the near

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future" rather the "staffing plans indicate the availability of an appropriate position in the near future"; "employee's service record and qualifications clearly predict satisfactory performance rather than "possesses qualifications of evident value to the Agency").

dk
Comment: "Staffing plans provide" may be a source of trouble unless it is made clear whose staffing plans are meant and how firm and official must be the commitment to fill such a position in the near future. It would appear that these words are intended to require a showing of more than a pious hope, but how much more? *see last sentence para 3*

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dk
19. Reason (5) justifying a Personal Rank Assignment is comparable to paragraph 5a(2) of [REDACTED] (being rescinded) and is an improvement in drafting although not different in scope. It avoids the necessity, required by the former words, of proving that an employee will be "of great value" in a future assignment.

dk
20. The proposed regulation, in connection with Personal Rank Assignment, does not contain any provision comparable to paragraph 5a(5) of [REDACTED] (being rescinded) relating to the situation of an employee whose slot has been downgraded.

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Query: Is this an intentional omission? *yes*

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Likewise the proposed regulation does not cover the ground of paragraph 5b and paragraph 5d of [REDACTED] (being rescinded). *not appropriate*

dk
21. Paragraph 3b of the proposed regulation provides a definition of "Career Service Staffing authorization". This is wholly new material not appearing in the regulations being rescinded but it requires no comment since it is clearly-stated and unlikely to raise legal question. *see Frank's comment.*

dk
22. Paragraph 3c of the proposed regulations defines "Senior Supervisors". No comment is required.

23. No definitions other than the above are provided in the proposed regulation. The definition of "Heads of Career Services" in the present version of [REDACTED] (being rescinded) is not being carried into the revision.

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dk
Comment: Consideration should be given to inserting a cross-reference to [REDACTED] which lists the Career Services and their designations and identifies the Heads thereof.

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Comment: A cross-reference to [REDACTED] which describes the Career Staff would be helpful because the similarity of the phrases "Career Service" and "Career Staff" will cause confusion to the general reader.

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~~SECRET~~Paragraph 4 - Responsibilities

24. Paragraph 4a of the proposed regulation, covering responsibilities of supervisors at all levels, is the same in substance as paragraph 4a of the present version of [REDACTED] (being rescinded). It is unobjectionable.

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25. Paragraph 4b of the proposed regulation covers the responsibilities of Heads of Career Services. Under paragraph 4b(1) of [REDACTED] (being rescinded), these officials either recommended favorable promotion action to the Director of Personnel or rejected and sent back promotion actions which they were unwilling to approve. In the latter case, however, a copy of the proposed promotion action was forwarded for the official file of the individual maintained in the Office of Personnel. An appeals procedure also was provided. The comparable provision of the proposed regulation merely makes the Head of the Career Service responsible for "recommending promotions to the Director of Personnel."

CIA gives a procedure which must be revised 25X1A

Comment: Would it not be desirable (1) to refer to the action required of the Head of the Career Service on rejecting a nomination made to him, and (2) to restate the assurance that the promotion papers will reach the individual's main file? *no*

26. Paragraphs 4b(2) - (5) of the proposed regulation present new material concerning the establishing of Panels, appointing their members and controlling the composition of the Career Service. These provisions are clear and appropriate.

Comment: Consideration should be given (paragraph 4b(4)) to designating a Chairman for each Panel. This will assist the orderly conduct of the Panel's proceedings.

Comment: Additional responsibilities should be stated as paragraph 4b(6): "Ensuring that an employee recommended for promotion will be utilized in a manner which takes account of his new grade". This responsibility of the Head of the Career Service is referred to in the proposed regulation in paragraph 6c (Procedures). *on 'calculated risk' basis. Not really necessary. etc but no change*

Comment: The responsibilities stated in 4b(2) of [REDACTED] (being rescinded) is not restated in the proposed regulation. This is an important duty which, although implicit, should be made explicit.

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27. Paragraph 4b(3) of [REDACTED] (being rescinded) has not been restated in the proposed regulation. It is not necessary to do so since the concept of competitive promotion encompasses this proposition.

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28. Paragraph 4c of the proposed regulation lists the responsibilities of the Director of Personnel. 4c(1), 4c(2) and 4c(3) of the proposed regulation restate, without change in scope, the provisions of 4c(1),

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4c(3) and 4c(4), respectively, of [REDACTED] (being rescinded). Paragraph 4c(4) of the proposed regulation restates part of 5a of [REDACTED] (being rescinded), as well as certain other material which is wholly new. All of these provisions in the new regulation are clear and appear adequate.

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32. Paragraph 6 of the proposed regulation describes the procedures to be utilized by Competitive Evaluation Panels (paragraph 6a), Senior Supervisors (paragraph 6b) and Heads of Career Services (paragraph 6c).

Query: Add to 6a(1) the designation of a Panel Chairman?

Comment: In 6a(2), second sentence, add the word "their" before "Panels" to remove ambiguity and indicate that the Panels are those of [redacted] and not those of [redacted]. Paragraph 6a(3) is the source of authority for the use of the proposed Handbook [redacted] as an "advisory guide book". Paragraph 6a(4) provides for the Panel's list to be furnished to the Head of the Career Service.

Comment: It is suggested that the Panel Chairman transmit this list. It is suggested also that all Panel members sign this list.

Query: Is the transmittal via an Operating Official, and if so, would it be desirable to say so? *no*

33. Paragraphs 6b(1), (2), and (3) of the proposed regulation name the Senior Supervisor as the official who submits promotion recommendations.

Comment: Is it not usual for promotion actions to originate at branch chief level (paragraph 4a so suggests)?

Comment: Would it facilitate Panel action if 6b(1) directed the Senior Supervisor to submit a second list of employees in the zone whom he is not recommending? See draft Handbook IID2, page 9. Possible alternative wording would be: delete "whom they recommend for promotion"; substitute "and a statement of their own recommendations or non-recommendations in each case".

Comment: Would it be desirable to add at the end of the present wording of sentence two of 6b(1): "and may append any explanation thereof to which they desire to call attention".

Comment: Paragraph 6b(2), first line, as written is not grammatical. It is suggested that the following be substituted: "during intervals when no Panel is in session for consideration of a grade level, etc.".

Comment: Paragraph 6b(2), second line: It is suggested that the words "through normal administrative channels" be added after the words "may submit". As now drafted, the role, if any, of the Operating Official is left in doubt.

Comment: Paragraph 6b(3): What is the meaning of "area" in the last line? Is it, for example, the office in the DD/I component?

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✓ What is intended to be made the competitive group for clerical personnel? Care should be taken that clericals do not gain an impression, although mistaken, that they are being given less thoughtful treatment than professionals.

34. Paragraph 6c(1) of the proposed regulation is addressed to the action by the Head of the Career Service on the Panel recommendations.

*not necessary
Op. Off. will
have all opportunity*
Comment: No mention is made of the role, if any, of the Operating Official and his authority, if any, to comment, agree or disagree with the Panel selections. Yet the Operating Official has substantive responsibilities which he exercises through his employees and thus he has a direct interest in their selection for advancement.

Comment: Paragraph 6c(1) second sentence: The phrase "in the foreseeable future" should be deleted as vague and therefore controversial; in its place is suggested that a reference be made to the Personal Rank Assignment provisions. *assigned in personal rank assignment.*

Comment: In paragraph 6c(1), last line, it is not clear as to the circumstances wherein Senior Supervisor may request a promotion action to be withheld.

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